Supreme Court, U.S.
FILED

(1)

97 . 102 APR 1 1 1997

No. OFFICE OF THE CLERK

In the
Supreme Court of the United States
October Term, 1996

Joseph R. Caterina, Frances H. Caterina,
Emmett Caterina, and Clara Caterina,

Petitioners,

v.

Blakely Borough, Lackawanna County Redevelopment Authority, General State Authority of Pennsylvania, Department of General Services of Pennsylvania, DAVLISA Enterprises, Inc., CECO Associates, Inc., and Attorney General of Pennsylvania,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
COMMONWEALTH OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

THOMAS M. MARSILIO, ESQ.
Counsel of Record (ID #34578PA)
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510
(717) 824-9949
Attorney for Petitioners

1997 – Bachman Legal Printing ■ (612) 339-9518 ■ FAX (612) 337-8053

20 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does a Decision of a Common Law Court supersede a conflicting Order of a Statutory Court of the unified Judicial System of the Commonwealth of Pennsylvania?

2. Were the Petitioners granted due process of Law by a Common Law Court which protected the Rights of the Petitioners pursuant to the Seventh Amendment of the Constitution of the United States and was same due process denied by the Unified Judicial System of the Commonwealth of Pennsylvania as it relates to the providing of a Trial by Jury in a matter involving the taking of real property?

LIST OF PARTIES

Condemnees, Petitioners:

Joseph R. Caterina and Frances H. Caterina
Emmett Caterina and Clara Caterina
c/o 202 Kenyon Drive, Peckville, PA. 18452
Phone (717) 489-8741 home, 489-6883 office
petitioners represented by:

Atty. Thomas M. MARSILIO, Esq.
Kisailus & Kisailus Law Offices,
15 Darling Street
Wilkes-Barre, PA. 18702
Phone (717) 824-9949 FAX (717) 824-9940

Condemnors and Related Parties, Respondents

Atty. Harry T. COLEMAN, Esq., Atty. Edwin A. ABRAHAMSEN, Esq./ Abrahamsen, Moran & Conaboy, 205-207 N. Washington Ave., 2nd Fl., W.C. Carter Bldg., Scranton, PA. 18503 Phone (717) 348-0200
Represents the following Respondents:

Blakely Borough, 1439 Main St., Peckville, Pa. 18452

Atty. (M. Colleen Foley CANOVAS)., Atty. Thomas J. FOLEY, Jr., Esq./Foley, McLane, Nealon, Foley & McDonald, P.C., 600 Linden Plaza, Scranton, PA. 18501-1108 Phone (717) 342-8194
Represents the following Respondent:

Lackawanna County Redevelopment Authority,
200 Adams Ave., Scranton, PA. 18503

Atty. Gregory C. SANTORO, Esq., for General State Authority; Atty. Catherine A. FOLEY, Esq., for Dept. General Services; c/o 603 North Office Building, Harrisburg, PA. 17125, Phone (717) 787-5599, Represents the following Respondents:

The General State Authority of PA and the Dept. of General Services of PA, c/o 603 North Office Building, Harrisburg, PA. 17125; Phone (717) 787-5599

Atty. Thomas CORBETT, Jr., Esq., Attorney General of Pennsylvania, 16th Fl., Strawberry Square, Harrisburg, PA. 17120, Represents the following Respondents:

Commonwealth of Pennsylvania, Attorney General Office, 1515 Strawberry Square, Harrisburg, PA. 17108

Atty. David H. SWISHER, Esq., P.O. Box 450 Pittston, PA. 18640, Phone (717) 654-3355; Represents the following Respondents:

Davlisa Enterprises, Inc., 800 Exeter Ave. West Pittston, PA. 18643; (717) 654-3355

Atty. James A. DOHERTY, Jr., Esq., /Scanlon, Howley, Scanlon & Doherty, 1000 Bank Towers, 321 Spruce St., Scranton, PA.18503 Phone (717) 346-7651, Represents the following Respondents:

CECO Associates, Inc., Suite 202, Scranton Electric Bldg., P.O. Box 995, Scranton, PA 18501

BASIS FOR JURISDICTION IN THE COURT

On January 15, 1997, Deputy Prothonotary Stehulak of the Supreme Court of Pennsylvania attested an Order of that Court denying a Petition for Reconsideration for Allowance of Appeal. This Court has Jurisdiction on this Writ of Certiorari pursuant to Supreme Court Rule 10(c) wherein the Supreme Court of the Commonwealth of Pennsylvania has decided an important question of Federal Law that has not been, but should be, settled by this Honorable Court. More specifically, this Honorable Court's Jurisdiction is invoked under 28 U.S.C. § 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT

The Right of the People to be Secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

FIFTH AMENDMENT

Nor be deprived of Life, Liberty, or Property without due process of law.

SEVENTH AMENDMENT

In suits at Common Law, where the value in controversy shall exceed Twenty dollars, the Right of Trial by Jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the Rules of Common Law.

NINTH AMENDMENT

The enumeration in the Constitution, of certain rights, shall be not construed to deny or disparage others retained by the people.

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FOURTEENTH AMENDMENT

... no State shall ... deprive any person of Life, Liberty, or Property, without due process of law; nor deny ... the equal protection of the laws ...

STATEMENT OF THE CASE

Respondents herein condemned portions of real property owned by the Petitioners subsequent to which Petitioners, after due notice to Respondents, service and advertising, litigated this case before a jury in a Common Law Court. The Common Law jury found that the Petitioners possessed the highest title in Law and are the rightful owners of the property and that the matter is *res judicata.*

Furthermore, Petitioners were denied due process in the Unified Judicial System of the Commonwealth of Pennsylvania since they were denied the right to a trial by jury in that system contrary to the Seventh Amendment of the Constitution of the United States of America. The various Constitutional issues discussed herein were properly raised before all of the Courts below in the following fashion

a. Before the Supreme Court of the Commonwealth of Pennsylvania by Petition for Allowance of Appeal as well as Petition for Reconsideration;

i. By order of the Supreme Court of Pennsylvania, attested January 15, 1997, the Petition for Reconsideration for Allowance of Appeal was DENIED, without further explanation;

ii. On November 13, 1996, the Supreme Court of Pennsylvania attested the Order denying the Petition for Allowance of Appeal, without further comment;

b. By Appeal to the Commonwealth Court of Pennsylvania filed to No. 187 CD 1996;

i. By Order of January 25, 1996, the said Commonwealth Court of Pennsylvania denied the aforementioned Appeal, in part, in that decision of the Common Law Court was not considered an Order of a Judge of the Unified Judicial System and, therefore, the Court opined in its Order that they lacked Jurisdiction;

c. By the filing of Letters Rogatory with the Court of Common Pleas of Lackawanna County on November 1, 1995 and November 2, 1995, placing the trial Court on Notice of the Decision of the Common Law Court;

i. The trial court ignored the above filings, never ruling on their merits.

ARGUMENT

Petitioner contends that the Decision of the Common Law Court supercedes that of the Court of the Unified Judicial System of the Commonwealth of Pennsylvania, in that in the lower Court, Petitioners were denied due process of law pursuant to the Seventh Amendment of the Constitution of the United States in that they were denied trial by jury. On the contrary, a jury was empaneled, heard testimony, and rendered a decision favorable to the Petitioners, which decision was contrary to that of the Trial Court. The decision of the Common Law Court adjudged that the Petitioners possess the highest title to the real property in question and their decision was *res judicata* thereby decreeing that the condemnation of the real property of the Petitioners was voided.

Petitioners allege that the issue of priority of an Order of a Common Law Court over that of a Court of an alleged Unified Judicial System, is a case of first impression with this Honorable Court.

Pursuant to the Seventh, Ninth and Tenth Amendments to the Constitution of the United States, Petitioners contend that they were entitled to the right to trial by jury relative to the condemnation claim. Denied this right, Petitioners resorted to an alternate dispute resolution before a Common Law Jury.

In commencing this Common Law action, the trial court was placed on Notice by the filing of Letters Rogatory, the filing of a Memorandum of Law and Material Facts. Furthermore, their action to Quiet Title was printed in newspapers of general circulation in Lackawanna County, Pennsylvania, three (3) times and service of Notice of the initiation of this action was served on all parties in interest. The procedure of the Petitioners met all of the Statutory and Common Law requirements of the Commonwealth of Pennsylvania relative to actions to Quiet Title. The Common Law jury then rendered their final Order and Judgment and the Quiet Title was confirmed. Notice thereof was once again served upon Respondents. It is interesting to note that at no time, did any of the Respondents object to the proceedings of the Common Law Court or Appeal its Decision.

As stated previously, the Commonwealth Court of Pennsylvania dismissed the Appeal of the Petitioners for lack of jurisdiction. Petitioners then Appealed to the Supreme Court of Pennsylvania who declined to entertain this Appeal and on reconsideration took the same course of action.

Once again it must be reiterated that at no time did Respondents or anyone acting on their behalf ever question, oppose, challenge, attempt to negate, or even address the validity of the Decision of the Common Law Court who quieted title to the lands in question in favor of the Petitioners. Their failure to act constitutes a default and their taking possession of the lands of the Petitioners further violates the Fourth Amendment to the Constitution of the United States relative to unlawful seizure of property.

Dated this 15th day of April, 1997.

By: Thomas M. Marsilio, Counsel of Record(ID#343578PA)
Kisailus Law Offices, 15 Darling Street, Wilkes-Barre,
PA 18702-2510, phone (717) 824-9949

INDEX TO THE APPENDIX

Common Law Court's Venue: Finding of Fact - Final Order and Judgment, dated December 16, 1995 .....A- 1

Pennsylvania Supreme Court, MD: Order denying Petition for Reconsideration for the Petition for Allowance of Appeal from the Commonwealth Court, dated January 14, 1997.....A- 5

Pennsylvania Supreme Court, MD: Order denying Petition for Reconsideration dated July 31, 1996.....A- 6

Pennsylvania Supreme Court, MD: Order denying Petition for Allowance of Appeal and Motion for Interlocutory Injunction, dated November 12, 1996 .....A- 7

Commonwealth Court of Pennsylvania: Order dated January 25, 1996.....A- 8

Commonwealth Court of Pennsylvania: Order denying Request for Reconsideration, dated February 20, 1996.. .....A- 9

Lackawanna County, Court of Common Pleas, IN REM EXHIBIT 'Order', Writ of Possession, dated September 3, 1993 .....A-10

Our One Supreme Court
Common Law Venue; Original and Exclusive Jurisdiction
A Superior Court Sitting with the Power of a Circuit and
United States District Court
in and for Lackawanna County, Pennsylvania state
united States of America

People in and for the United States of America ex rel. Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina and Clara A. Caterina, Demandents, Plaintiffs	"In Law"
Vs.	Case # C-02352-95
United States et al; and all Whom it May Concern Respondents, Defendants	Finding of Fact - Final Order and Judgement Appellate Case # CIV No. 1976 YR 1993; Re: Statutory Case # CIV 93-0512; No. 93-7565, 3rd; US Sup Ct 94-1231

FINDING OF FACT

Affidavit of Declaration Action to Quiet Title in Common Law for Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina was presented for publication and published for three consecutive weeks (See Exhibit M). No legal objections were recorded, and all parties who were known to possibly have an interest in this case were notified

by registered mail (see Exhibit O). No one/party has responded.

That a Notice of praecipe for entry of Default Judgment was served upon all parties on the fifth day of the twelfth month, 1995. Certified return receipt requested prepaid mail through the United States Postal Service, of which all receipts were returned, whereas none of the parties have responded to the court within the required ten (10) day period to date. Therefore, all parties have defaulted knowing that they were in default and that a Judgment would be entered against them without a hearing and that they would lose important rights and property. (See Exhibit P)

FINAL ORDER AND JUDGMENT

This action was instigated to determine who has venue and jurisdiction over Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina (See Exhibit "I"). Based on the doctrines of law, of this case, this court finds that Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina are NOT Federal Emergency citizens of the corporate U.S., nor a "subject" thereof. Therefore, Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina have chosen to proceed in their own right in Common Law.

This Court hereby finds the Demandents Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina to have and to own the Highest Title in Common Law to their real property and all other property, therefore Quiet Title has been granted by Our One Supreme Court on this day fourth. The Court hereby orders all other parties to cease and desist and restore the real property as detailed in exhibit "I" to Joseph R. Caterina, Frances H.

Caterina, Emmett A. Caterina, and Clara A. Caterina upon this notice. This case is *res judicata.*

So agreed to be done this 16th day of December, 1995. A.D.

Per-curiam s/Mary Victoria Jane Mezzuco
Per-curiam s/Nancy Mae Stoltzfus Zook
Per-curiam s/Abner S. Smucker
Per-curiam s/Arnold Rhodes
Per-curiam s/Jane Maureen Duffy
Per-curiam s/Floyd Ranck
Per-curiam s/Dennis Michael Bohmier
Per-curiam s/Melvin Ju Hoffer
Per-curiam s/David Rivera
Per-curiam s/Dennis Gordon
Per-curiam s/William E. Rivera
Per-curiam s/J. Claip Hoffer

united States of America)
Pennsylvania state) SS Acknowledgment
Lackawanna county)

I, Robert Terrence, Muzzoco, a Notary, duly commissioned and privately bonded by the People in and for the united States of America for Pennsylvania state, hereby attest and acknowledge that the above jury(s) signatures are the ones chosen, and have been duly presented with facts a testimony in relation to the Character of the Party(s)' and facts set forth in this Affidavit.

Fee $1.00

s/Robert Terrence, Muzzoco
Notary

Case # C-02352-95

Parties Served A Notice of Final Order and Judgment

I, Joseph R. Caterina, special appointed Marshal, for our One Supreme Court hereby attest that the following parties were notified of the Final Order and Judgment on Case No. C-02352-95 by US Postal Service First Class Mail unless otherwise specified. All parties served by certified return receipt requested mail.

Dec. 23, 1995

s/Joseph R. Caterina
Special Appointed Marshall

Attorney David Kurtz
L.A. Law Firm P.O. Box 107-F
R.D. #4
Lake Ariel, PA 18436

DAVLISA Enterprises
3 East McClure Avenue
Old Forge, PA 18518

Edwin A. Abrahamsen
W.C. Carter Building
205-207 N. Washington
Avenue, 2nd Floor
Scranton, PA 18593

The Office of Clerk of Court
Court of Common Pleas
of Lackawanna County
Lackawanna County
Courthouse
Scranton, PA 18500

Attorney for Condemnor
(M. Colleen Foley Canovas)
600 Linden Street - P.O. Box
1180
Scranton, PA 18501-1180

U.S. Court of Appeals-Third
Circuit
601 Market Street
21400 U.S. Courthouse
Philadelphia, PA 19106-1790

Blakely Borough, et al.
1439 Main Street borough Bldg
Peckville, PA 18452

The Office of Court Clerk
Supreme Court of United States
1 First St. N.E.
Washington, D.C. 20543

U.S. District Court,
(M.D. of Pa.)
P.O. Box 1148
Scranton, PA 18501

(page 3 of 3-Final Order and Judgment)

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: CONDEMNATION OF LAND OF DAVLISA ENTERPRISES, INC., JOSEPH and FRANCES CATERINA; and: EMMETT and CARLA CATERINA SITUATE IN THE BOROUGH OF BLAKELY,	:	No. 181 Middle District Allocatur Docket 1996
FOR AN EASEMENT FOR A FLOOD CONTROL PROJECT	:	Petition for Reconsideration for the Petition for Allowance of Appeal from the Commonwealth Court
PETITION OF JOSEPH and FRANCES CATERINA; and EMMETT and CLARA CATERINA	:	

ORDER

PER CURIAM:

AND NOW, this 14th day of January, 1997, the Petition for reconsideration for Allowance of Appeal is hereby DENIED.

TRUE & CORRECT
ATTEST: JAN 15 1997

S/JOAN L. STEHULAK
JOAN L. STEHULAK ESQUIRE
DEPUTY PROTHONOTARY

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: Condemnation of land of	:	No. 85 M.D.
Davlisa Enterprises, Inc.:	:	Miscellaneous
Joseph and Frances Caterina;	:	Docket 1996
and Emmett and Clara Caterina	:	
situation in the Borough of	:	
Blakely for an easement for	:	
flood control	:	
	:	
Petition of:	:	
	:	
Joseph and Frances Caterina and	:	
Emmett and Clara Caterina	:	Petition for
	:	Reconsideration

ORDER

PER CURIAM:

AND NOW, this 31st day of July, 1996, the Petition for Reconsideration is DENIED.

Mr. Justice Cappy did not participate in the decision or consideration of this case.

TRUE & CORRECT
ATTEST: JAN 15 1997

S/JOAN L. STEHULAK
JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: CONDEMNATION OF LAND OF DAVLISA ENTERPRISES, INC., JOSEPH and FRANCES CATERINA; and EMMETT and CARLA CATERINA SITUATE IN THE BOROUGH OF BLAKELY, FOR AN EASEMENT FOR A FLOOD CONTROL PROJECT	: No. 181 Middle District : Appeal Docket 1996 : : : : Petition for Allowance : of Appeal from the : :
PETITION OF JOSEPH and FRANCES CATERINA; and EMMETT and CLARA CATERINA	: : : :

ORDER

PER CURIAM:

AND NOW, this 12th day of November, 1996, the Petition for Allowance of Appeal is hereby DENIED.

It is further ORDERED that Petitioners' Motion for Interlocutory Injunction is DENIED.

TRUE & CORRECT
ATTEST: JAN 15 1997

S/JOAN L. STEHULAK
JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: CONDEMNATION OF : LAND OF DAVLISA ENTERPRISES, INC. etc. :

JOSEPH R. CATERINA et al., : Appellants No. 187 C.D. 1996

ORDER

PER CURIAM:

NOW, January 25, 1996, upon consideration of the above-captioned appeal, and it appearing that to the extent this appeal is from the order of the trial court dated September 3, 1993, granting writs of possession to the Borough of Blakely, it is untimely.

To the extent the notice of appeal is from the document dated December 16, 1995, establishing the title of appellants to certain real property, it appearing that the document is not an order of a judge of the unified judicial system to that appellants are aggrieved by such order, the appeal quashed for lack of jurisdiction.

CERTIFIED FROM THE RECORD
AND ORDER EXIT
JAN 18 1996
s/CR Hostutler
Deputy Prothonotary - Chief Clerk

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: CONDEMNATION OF : LAND OF DAVLISA ENTERPRISES, INC. etc. :

JOSEPH R. CATERINA et al., : Appellants No. 187 C.D. 1996

ORDER

PER CURIAM:

NOW, February 20, 1996, upon consideration of appellants' request for reconsideration of this court's order dated January 25, 1996, the request is denied.

CERTIFIED FROM THE RECORD
AND ORDER EXIT
FEB 21 1996
s/CR Hostutler
Deputy Prothonotary - Chief Clerk

In Re: In Rem	:	IN THE COURT OF
	:	COMMON PLEAS OF
	:	LACKAWANNA COUNTY
Condemnation of Lands of	:	
Joseph R. Caterina	:	
Frances H. Caterina	:	IN REM
Emmett A. Caterina	:	
Clara A. Caterina	:	
	:	NO. 1976 YEAR 1993
Situate in Blakely Borough	:	
Lackawanna County	:	
Pennsylvania	:	
Phase II Alleged Flood Project	:	
	:	J. Cottone

.....

Now on this 3rd of September 1993

petitioner granted 'Writ of Possession' upon lands of Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina and Clara A. Caterina to Redevelopment Authority of the County of Lackawanna, acting as agent for Borough of Blakely

By The Court:

_____

J Cottone

EXHIBIT 'Order'

Note: Never received an 'Order' to date